

PROFESSIONAL SERVICES GENERAL CONDITIONS

Section 1 COMPLIANCE WITH THE LAW

The Contractor, and its employees and agents, shall comply with all applicable federal, State, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as suppliers. The Contractor, and its employees and agents shall also comply with all federal, State and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. Contractor represents and warrants that it has complied with all federal, State, foreign and local laws applicable to the performance of its obligations under this Contract.

Section 2 TERMINATION

2.1 Termination Due to Lack of Funds or Change in Law. DNR shall have the right to terminate this Contract without penalty by giving 60 days written notice to the Contractor as a result of any of the following:

2.1.1 The legislature or governor fail in the sole opinion of DNR to appropriate funds sufficient to allow DNR to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or if funds anticipated for the continued fulfillment of the Contract are, at any time, not forthcoming or are insufficient, either through the failure of DNR to appropriate funds or funding from a federal source is reduced or discontinued for any reason, or through discontinuance or material alteration of the program for which funds were provided;

2.1.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by DNR to make any payment hereunder are insufficient or unavailable for any other reason as determined by DNR in its sole discretion;

2.1.3 If DNR's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified;

2.1.4 If DNR's duties, programs or responsibilities are modified or materially altered; or

2.1.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects DNR's ability to fulfill any of its obligations under this Contract.

2.2 Immediate Termination by DNR. DNR may terminate this Contract for any of the following reasons effective immediately without advance notice and without penalty:

2.2.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

2.2.2 DNR determines that the actions, or failure to act, of the Contractor, and its agents and employees have caused, or reasonably could cause, any person's life, health or safety to be jeopardized;

2.2.3 The Contractor fails to comply with confidentiality laws or provisions; or

2.2.4 The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

2.3 Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for DNR to declare the Contractor in default of its obligations under this Contract.

2.3.1 The Contractor fails to perform, to DNR's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;

2.3.2 DNR determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

2.3.3 The Contractor fails to make substantial and timely progress toward performance of the Contract;

2.3.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or State law to the extent allowed by applicable federal or State law including bankruptcy laws; the Contractor terminates or suspends its business; or DNR reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or State law;

2.3.5 The Contractor has failed to comply with applicable federal, State and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;

2.3.6 The Contractor has engaged in conduct that has or may expose the State or DNR to liability, as determined in DNR's sole discretion;

2.3.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or the Contractor has misappropriated a trade secret, or

2.3.8 Contractor fails to comply with any of the Task Milestone Dates contained in this Contract.

2.4 Notice of Default. If there is a default event caused by the Contractor, DNR shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in DNR's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, DNR may either:

2.4.1 Immediately terminate the Contract without additional written notice; or

2.4.2 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

2.5 Termination upon Notice. Following 30 days written notice, DNR may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to DNR up to and including the date of termination.

2.6 Remedies of the Contractor in Event of Termination by DNR. In the event of termination of this Contract for any reason by DNR, DNR shall pay only those amounts, if any,

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due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which DNR is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to DNR under this Contract in the event of termination. However, DNR shall not be liable for any of the following costs:

- 2.6.1** The payment of unemployment compensation to the Contractor's employees;
- 2.6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 2.6.3** Any costs incurred by the Contractor, including, but not limited to, startup costs, overhead or other costs not directly associated with the performance of the Contract; and
- 2.6.4** Any taxes that may be owed by the Contractor not directly in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

2.7 The Contractor's Termination Duties. The Contractor upon receipt of notice of termination or upon request of DNR, shall:

- 2.7.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished and conclusions obtained.
- 2.7.2** Immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor.
- 2.7.3** Comply with DNR's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.
- 2.7.4** Cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.
- 2.7.5** Immediately return to DNR any payments made by DNR for services that were not rendered by the Contractor.

2.8 Rights in incomplete products. In the event the Contract is terminated, all finished or unfinished documents, data, reports, or other materials prepared by the Contractor under this Contract shall, at the option of DNR, become DNR's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other material.

Section 3 CONFLICT BETWEEN SPECIAL AND GENERAL CONDITIONS

If a General Condition conflicts with a Special Condition, they shall be construed, if possible, so that effect is given to both provisions. If the conflict between the provisions is irreconcilable, then the Special Condition shall prevail as an exception to the General Condition.

Section 4 INDEPENDENT CONTRACTOR

The status of the Contractor shall be that of an independent contractor. The Contractor, and its employees and agents performing under this Contract are not employees or agents of the State or any agency, division or department of the State. Neither the Contractor nor its employees shall be considered employees of DNR or the State for federal or State tax purposes. DNR will not

withhold taxes on behalf of the Contractor. Contractor shall be responsible for payment of all taxes in connection with any income earned from performing this Contract.

Section 5 CONFLICT OF INTEREST

5.1 The Contractor covenants that the Contractor presently has no interest and shall not acquire any interest, direct and indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

5.2 During the term of this Contract, Contractor shall not provide services that would create a conflict of interest with the Contractor's duties set out in this Contract. In determining whether a particular activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

5.2.1 The activity involves the use of the State's or DNR's time, facilities, equipment, and supplies or other evidences of employment for purposes other than the performance of Contractor's obligations under this Contract.

5.2.2 The activity involves the receipt of, promise of, or acceptance of money or other consideration by Contractor from anyone other than the State or DNR for the performance of any acts that Contractor is required or expected to perform as a part of Contractor's performance under this Contract.

5.2.3 The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of DNR.

5.3 If the activity creating a conflict of interest is in progress when the term of this Contract begins or is described in paragraph 5.2.1 or 5.2.2 above, then Contractor shall immediately cease the activity. During the term of this Contract, Contractor shall not enter into any activity described in paragraph 5.2.3 or which constitutes any other unacceptable conflict of interest. Contractor shall immediately disclose to DNR the existence of any conflict of interest, including conflicts of interest which are described in paragraph 5.2.3 and are in progress when the term of this Contract begins.

Section 6 AMENDMENTS

This Contract may be amended only by written mutual consent of the parties.

Section 7 CHOICE OF LAW AND FORUM

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or federal court, which may be available to DNR or the State.

Section 8 SEVERABILITY

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

Section 9 ENTIRE AGREEMENT

This Contract constitutes the entire agreement between DNR and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the Contract solely on the basis of the terms and conditions herein contained and not in reliance upon any representation, statement, inducement or promise, whether oral or written, not contained herein. This Contract supersedes all prior contracts and agreements between DNR and the Contractor for the services provided in connection with this Contract.

Section 10 ASSIGNMENT AND DELEGATION

This Contract may not be assigned, transferred or conveyed, in whole or in part, without the prior written consent of the other party. For the purpose of construing this provision, a transfer of a controlling interest in the Contractor shall be considered an assignment.

Section 11 REPRESENTATIONS AND WARRANTIES

11.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law. All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to DNR, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

11.2 Concepts, Materials, and Works Produced. Contractor represents and warrants that all the concepts, materials and deliverables produced, or provided to DNR pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and work product produced under this Contract. The Contractor represents and warrants that the concepts, materials and work product produced under this Contract, and DNR's use of same, and the exercise by DNR of the rights granted by this Contract, shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and work product produced under this Contract will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute any software, the materials owned by the Contractor and any other materials, work product produced under this Contract and methodologies used in connection with providing the services contemplated by this Contract.

11.3 Professional Practices. The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

11.4 Conformity with Contractual Requirements. The Contractor represents and warrants that the work product produced under this Contract will appear and operate in conformance with the terms and conditions of this Contract.

11.5 Authority to Enter into Contract. The Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to DNR.

11.6 Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that DNR will not have any obligations with respect thereto.

11.7 Title to Property. The Contractor represents and warrants that title to any property assigned, conveyed or licensed to DNR is good and that transfer of title or license to DNR is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

11.8 Industry Standards. The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the applicable industry standards in the performance of this Contract.

11.9 Technology Updates. The Contractor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

Section 12 CONFIDENTIALITY

12.1 Access to Confidential Data. The Contractor's employees and agents may have access to confidential data maintained by DNR to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by DNR. The Contractor shall provide to DNR a written description of its policies and procedures, if any exist, to safeguard confidential information. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents and employees to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of DNR at all times. Failure by the Contractor to submit its confidentiality policies or to comply in any way with the requirements of this paragraph shall not affect Contractor's obligations to comply with other requirements herein. Nothing in this paragraph shall be construed to in any way affect the Contractor's obligations to comply with Iowa and DNR statutes and rules applicable to confidentiality, as well as DNR policies and procedures regarding confidentiality, including Department of Administrative Services (DAS) and DNR IT Security policies and procedures.

12.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of DNR, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of DNR. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of DNR.

12.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify DNR and cooperate with DNR in any lawful effort to protect the confidential information.

12.4 Reporting of Unauthorized Disclosure. The Contractor shall immediately report to DNR any unauthorized disclosure of confidential information.

12.5 Survives Termination. The Contractor's obligation under this Contract regarding confidential materials and information shall survive termination of this Contract.

Section 13 PROPERTY, INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT

13.1 Title to Property. Title to all property furnished by DNR or the State to Contractor to facilitate the performance of this Contract shall remain the sole property of DNR and the State. All such property shall be used by Contractor only for purposes of fulfilling its obligations under

this Contract and shall be returned to DNR upon the earliest of completion, termination, or cancellation of this Contract or at DNR's request. Contractor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Contract, Contractor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities. Title to all property purchased by Contractor, for which Contractor has been reimbursed or paid by DNR under this Contract, shall pass to and vest in the State, except as otherwise provided in this Contract.

13.2 Care of Property. Contractor shall be responsible for the proper custody and care of any DNR-owned property, including data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and DNR property furnished for Contractor's use in connection with the performance of the Contract. Contractor shall exercise its best efforts to prevent damage to all such property and shall, at DNR's request, restore damaged property to its condition prior to the damage at the sole expense of Contractor. Such restoration shall be complete when judged satisfactory by DNR. In the event such property cannot be restored to DNR's satisfaction, Contractor shall reimburse DNR for any loss or damage to such property caused by Contractor, or any agent, contractor or subcontractor employed or utilized by Contractor. Contractor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of DNR and the State. Contractor shall obtain the prior advance written approval from DNR prior to Contractor's use of the name, marks or intellectual property rights of DNR or the State.

13.3 Hardware and Equipment. In the event that any hardware and other equipment owned by Contractor and used in connection with this Contract is subject to the security interest or a legal or equitable interest by a third party who is not a party to this Contract, Contractor shall insure in any such transactions that DNR shall be notified of a default occurring under the instrument and if Contractor does not cure the default within the time allowed, DNR may, in its sole discretion, cure the default by Contractor and assess or set off all costs associated with affecting cure, including the amount in default and reasonable attorneys fees against Contractor.

13.4 Ownership of Deliverables and Intellectual Property. Contractor agrees that the Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, such Deliverables, shall become and remain the sole and exclusive property of the DNR and the State. Contractor hereby irrevocably transfers, assigns and conveys to the DNR and the State all right, title and interest in and to such Deliverables and intellectual property rights and proprietary rights. Contractor shall take all actions as may be necessary or requested by the DNR to carry out and effect such transfer, assignment and conveyance. Contractor represents and warrants that the DNR and the State shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Contractor or of any third party. The DNR and the State shall have the right to obtain and hold copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Contractor shall assist the DNR and the State to obtain and secure copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the DNR and the State all the right, title and interest in and to such Deliverables. Contractor also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. The Contractor shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of the DNR and the payment of such royalties or other compensation as the DNR deems appropriate. As the owner of such Deliverables, the DNR and the State may, without limitation: (i) adapt, change, modify, edit or use the Deliverables as the DNR or the State sees fit, including in combination with the works of others, prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now

known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use, sell, license, sublicense, or lease the Deliverables and any intellectual property rights therein or related thereto without payment of additional compensation to Contractor.

13.5 Further Assurances. At the DNR's request, Contractor shall execute and deliver such instruments and take such other action as may be requested by the DNR to establish, perfect or protect the State's and the DNR's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances required by this Contract. Contractor shall execute any instruments, provide all facts known to it, and do all other things requested by the DNR (both during and after the term of this Contract) in order to vest more fully in the State and the DNR any and all ownership rights and intellectual property rights in and to the Deliverables. In the event the DNR is unable, after reasonable effort, to secure Contractor's signature on any letters, patent, copyright, or other analogous protection relating to the Deliverables, for any reason whatsoever, Contractor hereby irrevocably designates and appoints the DNR, and its duly authorized officers, employees and agents, as Contractor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same legal force and effect as if executed by Contractor.

13.6 Disputes. In any dispute over ownership or licensing rights, Contractor shall have the burden of proving prior or independently developed rights by clear and convincing proof.

Section 14 JOINT AND SEVERAL LIABILITY

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, then all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default activities and obligations.

Section 15 WAIVER

Except as specifically provided for in a waiver signed by duly authorized representatives of DNR and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

Section 16 NOTICE

16.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows in Section 1, Special Conditions, of this Contract.

16.2 Each such notice shall be deemed to have been provided:

16.2.1 At the time it is actually received;

16.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

16.2.3 Within five days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

16.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

Section 17 CUMULATIVE RIGHTS

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

Section 18 TIME IS OF THE ESSENCE

Time is of the essence with respect to the performance of the terms of this Contract.

Section 19 RECORD RETENTION AND ACCESS

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to DNR throughout the term of this Contract for a period of at least 5 years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

Section 20 SOLICITATION

The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

Section 21 OBLIGATIONS BEYOND CONTRACT TERM

This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of DNR and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

Section 22 DELAY OR IMPOSSIBILITY OF PERFORMANCE

The Contractor shall not be in default under this Contract if performance is delayed or if Contractor may not reasonably perform the Contract due to an act of God, flood, fire or similar events. In each such case, the delay or impracticability must be beyond the reasonable control and anticipation of the Contractor, and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and this paragraph shall not be applicable. It shall be the responsibility of the Contractor to prove that performance was delayed or impracticable within the meaning of this paragraph.

Section 23 SUPERCEDES FORMER CONTRACTS OR AGREEMENTS

Unless this Contract is an amendment to a contract entered into between DNR and Contractor and is designated as such, then this Contract supersedes all prior contracts or agreements between DNR and the Contractor for the services provided in connection with this Contract.

Section 24 USE OF THIRD PARTIES AND SUBCONTRACTORS

Contractor may not contract with third parties for the performance of any of Contractor's obligations under this Contract, unless and then only to the extent that the Special Conditions of

this Contract specify otherwise. If the Special Conditions provide for a subcontractor or subcontractors, then the following conditions shall apply:

24.1 All subcontracts shall be subject to prior approval by the DNR. The DNR's consent shall not be deemed in any way to provide for the incurrence of any obligation of DNR in addition to the remuneration agreed upon in this Contract. Any subcontract to which DNR has consented shall be in writing and shall in no way alter the terms and conditions of this Contract.

24.2 The Contractor may enter into subcontracts to complete the work required by this Contract provided that the Contractor remains responsible for all services performed under this Contract. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Contract. The Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any subcontractor.

24.3 All restrictions, obligations and responsibilities of the Contractor under this Contract also shall apply to the subcontractors.

24.4 DNR shall have the right to request the removal of a subcontractor from the Contract for good cause. The Contractor shall indemnify, defend and hold harmless DNR and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's breach of any subcontract in which it enters, including Contractor's failure to pay any and all amounts due by Contractor to any subcontractor.

24.5 Each subcontract shall contain provisions for DNR access to the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein.

24.6 Any action of a subcontractor, which, if done by Contractor, would constitute a breach of this Contract, shall be deemed a breach by Contractor and have the same legal effect.

24.7 If delay results from a subcontractor's conduct, from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and Section 22, "Delay or Impossibility of Performance," shall not be applicable.

24.8 If the Contract is subject to the provisions of Iowa Code chapter 8F, then the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontract Contractor enters into pursuant to this Contract. Any compliance documentation, including but not limited to certification, received from any subcontractor shall be forwarded to DNR immediately.

Section 25 SELF-INSURANCE BY THE STATE OF IOWA

Pursuant to Iowa Code chapter 669, DNR and the State are self-insured against all risks and hazards related to this Contract. No separate fund has been established to provide self-insurance, and the State is not obligated to establish any such fund during the term of this Contract.

Section 26 INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the State and DNR, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, related to or arising from: any breach of this Contract; any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor; the Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor; any failure by the Contractor to comply with the Compliance with the Law provision of this Contract; any failure by the Contractor to make all reports, payments and

withholdings required by federal and State law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State; any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

Section 27 IMMUNITY FROM LIABILITY

Every person who is a party to the Contract is hereby notified and agrees that the State, DNR, and all of their employees, agents, successors, and assigns are immune from liability and suit for Contractor's and subcontractors' activities involving third parties arising from the Contract.

Section 28 NON-SUPPLANTING REQUIREMENT

To the extent required by federal or State law, federal and State funds made available under this Contract shall be used to supplement and increase the level of State, local, and other non-federal funds that would in the absence of such federal and State funds be made available for the programs and activities for which funds are provided and will in no event take the place of State, local, and other non-federal funds.

Section 29 CERTIFICATION REGARDING SALES AND USE TAX

By executing this Contract, the Contractor certifies that it is either (a) registered with the Iowa Department of Revenue, collects and remits sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code sections 423.1(42) and (43). The Contractor also acknowledges that the DNR may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the DNR filing action for damages for breach of contract.

Section 30 TAXES

The State is exempt from federal excise tax, and no payment will be made for any taxes levied on Contractor's employees' wages. The State is exempt from State and local sales and use taxes on the Deliverables.

Section 31 EQUAL EMPLOYMENT PROVISIONS

The Contractor has read and understands the provisions in Exhibit C, Equal Employment Opportunity, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

Section 32 FEDERALLY-FUNDED AGREEMENTS

If this Contract is funded by federal monies, then the Contractor has read and understands the provisions of Exhibit D, Additional Requirements for Federally-Funded Agreements, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

Section 33 INSURANCE MAINTAINED BY CONTRACTOR

The Contractor has read and understands the provisions in Exhibit E, Insurance Clause, attached hereto and made part of this Contract by this reference, and the Contractor agrees to conform to the requirements contained therein.

Section 34 INFORMATION TECHNOLOGY SECURITY

The Contractor and all Contractor personnel shall comply with Iowa information technology security statutes, rules and policies. By signing this Contract, the Contractor acknowledges that the Contractor has read and understands the provisions of the information technology security policies adopted by the Iowa Department of Administrative Services (DAS) and DNR in effect on the date of signing. The Contractor further agrees to read and abide by any revised DAS and DNR policies, posted on the respective agency websites, that come into effect during the term of this Contract.

EXHIBIT C
Equal Employment Opportunity.

The Contractor agrees to the following:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated, during employment, without regard to their race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability relates to a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor's business. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post notices, setting forth provisions of this nondiscrimination clause, in conspicuous places available to employees and applicants for employment.
2. The Contractor shall in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, religion, sex, national origin, age, gender identity, gender orientation, pregnancy, family status, marital status or mental or physical disability except where mental or physical disability is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor's business.
3. The Contractor shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965, as amended, Iowa Executive Order 15 of 1973, Chapter 19B, Code of Iowa, Federal Executive Order 11246 of 1965, as amended by Federal Executive Order 11376 of 1967, and Title VI of the Civil Rights Act of 1964, as amended. The Contractor shall furnish all information and reports requested by the State or required by, or pursuant to, the rules and regulations thereof and shall permit access to payroll and employment records by the State for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.
4. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the aforesaid rules, regulations or requests, this Contract may be canceled, terminated or suspended in whole or in part. In addition, the State may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act of 1965, as amended, Chapter 216, Code of Iowa, or as otherwise provided by law.
5. The Contractor shall include the provisions of paragraphs 1 through 4 hereof in every subcontract, unless specifically exempted by approval of the State, so that such provisions shall be binding on each subcontract. The Contractor shall take such action with respect to any subcontract as the State may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the State, the Contractor may request the State to enter into such litigation to protect the interests of the State.
6. In accordance with the provisions of 541 Iowa Administrative Code chapter 4:
 - o The Contractor or subcontractor is prohibited from engaging in discriminatory employment practices forbidden by federal and State law, executive orders and rules of the department of management, which pertain to equal employment opportunity and affirmative action.

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- The Contractor or subcontractor may be required to have on file a copy of the affirmative action program, containing goals and time specifications. These contractual provisions shall be fully enforced. Any breach of them shall be regarded as a material breach of the Contract.
- Compliance with the provisions of Iowa Code section 19B.7 and all applicable rules of the department of management prior to the execution of the Contract shall be a condition of the Contract binding upon the Contractor or service provider, its successors, and assignees.
- Failure to fulfill the nondiscrimination requirements of this Contract or any of the rules and orders may cause the Contract to be canceled, terminated, or suspended in whole or in part, and the Contractor or service provider may be declared ineligible for future State contracts in accordance with authorized procedure or the Contractor may be subject to other sanctions as provided by law or rule.
- The Contractor may be required to submit to the department of management or the DNR a copy of its affirmative action plan containing goals and time specifications.
- The Contractor shall be able to demonstrate to the satisfaction of the department of management or the DNR that its affirmative action program is productive.
- The Contractor may be required to submit reports as requested by the department of management. The department of management may request other relevant information from the Contractor at any time.
- The department of management may undertake a compliance review of the Contractor, and the department of management may take action, as appropriate, to seek to terminate contracts or funding found to be in violation of the rules.

EXHIBIT D
Additional Requirements for Federally-funded Agreements

- 1. Suspension and Debarment.** Entities identified on the Excluded Parties List System at <http://www.epls.gov> are ineligible to enter into contracts with DNR.

Contractor shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Contractor is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Contractor may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

- 2. Lobbying Restrictions.** The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

3. Pro-Children Act of 1994. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by federal grant, contract, loan or loan guarantee. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party. The Contractor certifies that it will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

4. Certified Audits. Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to DNR if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by DNR. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to DNR that the audit was conducted in accordance with government auditing standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the DNR. See OMB Circular A-133 Section - - .210 for a discussion of subrecipient versus vendor relationships.

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5. Drug Free Work Place. The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

EXHIBIT E

Insurance Clause

1. Insurance Policies. Contractor shall maintain in full force and effect, with insurance companies of recognized responsibility, at its expense, insurance covering its work of the type and in amounts required by this Contract, including any extensions and renewals. Contractor's insurance shall, among other things, be occurrence based and shall insure against loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State and DNR shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

Unless otherwise requested by DNR, Contractor shall, at its sole cost, cause to be issued and maintained in effect during the entire term of this Contract not less than the insurance coverage's set forth below each naming DNR and the State as an additional insured or loss payee, as applicable:

2. Type of Insurance

Type of Insurance	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 Million
	Prod./Comp.	
	Aggregate	\$1 Million
	Personal injury	\$1 Million
Property Damage	Each Occurrence	\$1 Million
	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	
Pollution Liability coverage written on an occurrence basis with the DNR and State of Iowa as additional insureds	Each occurrence	\$1 Million
	Aggregate	\$1 Million

3. Professional Liability Insurance. Contractor shall procure and maintain a professional liability insurance policy that is specific to the project that is the subject of this Contract. The insurance shall provide \$100,000 in coverage and a three-year extended discovery period following completion of the term of this Contract.

4. Claims Provision. All insurance policies required by this Contract must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

5. Certificates of Coverage. All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of DNR. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to DNR within 10 days of the date DNR enters into this Contract. The certificates shall be subject to approval by DNR. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least 30 days prior written notice to DNR. Approval of the insurance certificates by DNR shall not relieve the Contractor of any obligation under this Contract.

6. No Limitation of Liability. Acceptance of the insurance certificates by DNR shall not act to relieve Contractor of any obligation under this Contract. All insurance policies and certificates shall be issued only by companies authorized to transact business in the State. It shall be the

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responsibility of Contractor to keep the respective insurance policies and coverages current and in force during the life of this Contract.

7. Warranty. Contractor warrants that it has examined its insurance coverage to determine whether DNR and the State can be named as additional insureds without creating an adverse effect on Contractor's coverage.

8. Waiver of Subrogation Rights. Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against DNR or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to DNR.